Supreme Court, U.S.
FILED
JUL 30 1992
OFFICE OF THE CLERK

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

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INTRODUCTION

Judicial intervention by the federal courts into legislative and congressional redistricting is governed by a simple rule that recognizes the primacy of the states and limits federal involvement to situations in which state institutions are unable to complete the important process in a timely manner. The rule is well-supported by significant policy considerations. Appellees do not argue for a different jurisdictional rule; instead they claim that the leading case of Scott v. Germano, 381 U.S. 407 (1965), should be narrowly construed in a manner which would effectively eliminate the role of the state judiciary and result in federal oversight and primacy

over all state redistricting matters. Furthermore, Appellees argue that the effective guidelines established by this Court in Thornburg v. Gingles, 478 U.S. 30 (1986), to govern claims of Voting Rights Act violations should be disregarded and replaced by an unpredictable standard which leaves the federal courts with nearly unfettered discretion in review of such claims.

Appellees' arguments are not only unsupported by law, they are plainly undesirable as a matter of policy. Lacking coherent legal and policy arguments for their positions, appellees devote much of their brief to a flawed and inconsistent attack on the state court judgment, the state court proceeding, and the state court itself. Appellants' position, that the Minnesota Legislature and the state judiciary acted in a prompt and constitutional manner to redraw the state's election districts, is supported by the important precedents of this Court and sound policy considerations. The contrary judgment of the federal court must be vacated.

ARGUMENT

I. THE FEDERAL COURT WAS REQUIRED TO DEFER TO THE PARALLEL STATE COURT ACTION UNDER THE ABSTENTION PRINCIPLES OF SCOTT V. GERMANO.

Appellees appear to concede that the doctrine set forth in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), requires federal district courts to defer to parallel state court redistricting actions. They nonetheless argue that the federal court was permitted to adopt redistricting plans in this action because the state court in Cotlow v. Growe, Court File Nos. C8-91-985 & MX

91-001562 (Minn. Dist. Court, Special Redistricting Panel), allegedly failed to adopt a congressional redistricting plan in a timely manner and allegedly failed to adopt a valid legislative redistricting plan. In effect, appellees read Germano as holding that if a federal court does not agree with either the state court's decision or the timing of that decision, the federal court may intervene and adopt its own plan.

Appellees' construction of Germano leaves no effective role for state courts in the redistricting process. Apart from lacking a legal basis, this construction runs directly counter to the policy underpinnings of Germano. Appellees offer no adequate justification for the federal court's refusal to defer to the state court action.

A. The State Court Would Have Adopted a Congressional Redistricting Plan in a Timely Manner but for the Federal Court's Preemptive Actions.

Appellees claim that the federal court fully complied with Germano in issuing a congressional plan because neither the Legislature nor the state court adopted a congressional plan in timely fashion. In fact, however, the state court did act in a timely manner to adopt a congressional redistricting plan. Any delay can be solely attributable to the federal court's repeated attempts to stop the state court from proceeding.

The state court was prepared to issue its plan on March 3, 1992. A-446.[1] Adoption of a plan at that time would have

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[1]References to the Appendices and Record in this action are denoted as follows:

Appendix to Jurisdictional Statement	-- A-#
Appellees' Supplemental Appendix	-- SA-#
Joint Appendix	-- JA-#
Appendix to Brief of Appellants	-- ABA-#
Record (Docket Number of Document in Federal District Court's File)	-- R-#

permitted elections to proceed on schedule; the state's congressional districts did not need to be drawn until at least late March, 1992.[2] Because the Legislature did not enact a congressional redistricting plan before it adjourned in May, 1991, the state court chose not to adopt a congressional plan until after the Legislature reconvened in January, 1992, thereby giving the Legislature further opportunity to enact a congressional plan. A-442; ABA-3.[3] The federal court's injunction of the state court proceedings from December 5, 1991, until January 10, 1992, delayed the state court's efforts to begin drafting a congressional plan. A-359 to A-361; A-445 to A-446.

Once the federal court's injunction was set aside and the Legislature failed to enact a congressional redistricting plan,[4] the state court proceeded diligently and responsibly to create its own plan; it received proposed plans and briefs and held a hearing on the merits of the competing plans on February 17, 1992. See Brief of Appellants at 10. The federal court entered its judgment

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[1]In Minnesota, legislative districts, but not congressional districts, must be drawn before precinct boundaries can be drawn. See Minn. Stat. § 204B.14 subd. 3 (1990). In 1992, Minnesota's precinct caucuses were held on March 3, 1992. County and legislative district conventions were held in late March and early April of 1992 and congressional district conventions were held in late April and early May, 1992.

[2]The state court acted earlier on legislative redistricting because the Legislature had already enacted a plan. A-263 to A-264. To implement the law, Act of May 29, 1991, ch. 246, 1991 Minn. Laws 741 ("Chapter 246"), the state court merely needed first to interpret it and then to correct its few remaining technical defects. See A-261 to A-262.

[3]The Legislature was in adjournment from May 20, 1991 until January 6, 1992. It considered the issue of congressional redistricting after reconvening. Its plan, Senate File 1597 was vetoed on January 10, 1992. The Senate voted to override the veto on February 20, 1992. The House did not attempt to override the veto.

adopting a congressional redistricting plan on February 19, 1992, and preempted the state court action just as the state court was preparing to issue its plan. The state court indicated that it was prepared to issue its congressional plan on March 3, 1992. A-446.

When a state court is proceeding diligently to produce a redistricting plan in a timely manner, the doctrine set forth in Germano clearly and unequivocally prohibits interference by a federal court. Under no circumstances can the state court be found to have proceeded in an untimely manner so as to warrant federal court intervention, as appellees suggest. The federal court's violation of Germano in drafting a congressional plan is especially egregious as the "delays" resulted from the fact that the state court was twice prevented from proceeding more expeditiously by the federal court's earlier improper injunctions. It is "bootstrapping" in the most outrageous manner to permit a federal court to avoid Germano by wrongly enjoining a state court proceeding and then using the delay engendered as an excuse to override concurrent state jurisdiction.

B. The Federal Court Was Not Permitted Under Scott v. Germano To Disregard the State Court's Legislative Redistricting Plan.

The state court adopted its final legislative redistricting plan on January 30, 1992, nearly three weeks prior to the federal court's judgment.[5] Appellees contend that the federal court was justified in adopting a conflicting legislative redistricting plan because the state court's plan was not "valid." This contention is

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[5]Appellants noted in their initial brief that the state court's judgment adopting a legislative redistricting plan became final and unappealable on April 29, 1992, and that the state court's judgment is not before this Court on appeal. Appellees fail to respond to this point or to explain how the conflict between the state and federal court judgments adopting incompatible legislative redistricting plans can be resolved unless the federal court's judgment is reversed.

unsupported by any authority or principle and is contrary to well-settled rules of federalism.

Appellees erroneously assume that the federal court properly sat in review of the state court's judgment. As this Court has made plain, however, "[l]ower federal courts possess no power whatever to sit in direct review of state court decisions." Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296 (1970) (emphasis added). This rule is essential in our federal system. See id. at 297 (the "fundamental principle of a dual system of courts leads inevitably" to the rule preventing federal courts from interfering with state court actions). As this case strongly demonstrates, it would be wasteful and unworkable to permit lower federal courts to sit in review of the decisions in parallel state court redistricting actions. If such lower federal court review were permitted, election officials would be confronted with inconsistent judgments, unnecessary appeals would result, and parties dissatisfied with a state court's rulings would be encouraged to relitigate issues in federal court.

Germano does not hold or even suggest that a federal court may review a state court's judgment. In fact, Germano holds just the opposite. The Court stated that "in the event a valid reapportionment plan is not timely adopted [the federal district court] may enter such orders as it deems appropriate, including an order for a valid reapportionment plan . . . ." Germano, 381 U.S. at 409-10 (emphasis added). A federal court must presume that a state court's judgment is valid unless and until the state court's judgment is reversed. See Brief of Appellants at 24. Moreover, Germano calls for respect of state court redistricting efforts; it does not permit lower federal courts to pass judgment on the validity of a state court judgment.

The only authority on which appellees rely for their construction of Germano is the recent decision in Members of the Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 (N.D. Cal. March 3, 1992). That decision is contrary to

appellees' position, however, and supports appellants' position. The federal district court in that case did not address the validity of the state court's judgment, but simply satisfied itself that the state court action had provided the parties with due process. The federal district court expressly refused to review the merits of the state court's holding and stated: "Once the state provides a forum that accords the parties due process, the United States Supreme Court considers that state forum to be as competent as federal courts for the adjudication of federal issues." Id. slip op. at 16; see also Mahoney v. Burkhardt, 299 F. Supp. 787, 789 (D.N.J. 1969) (federal court deferred to parallel state court redistricting action and indicated that any challenges to state court plan should be addressed by appeal).

Under Germano, the federal court in this action was required to defer to the state court proceeding. The state court's judgment was never appealed and therefore was never found to be invalid. The federal court was not free to consider the validity of the state court's judgment and, as a result, the federal court's judgment adopting a legislative redistricting plan should be vacated.

C. The State Court's Judgment Adopting a Legislative Redistricting Plan Addressed All Issues Regarding Chapter 246 Which Were Raised in the Federal Court.

As an alternative argument, appellees reiterate the federal court's contention that the state court ruling did not address all the issues raised in the federal court action and, as a result, the federal court action was proper. Brief of Appellees at 14. First, appellees state that "the pleadings in the state court did not challenge the constitutionality of Chapter 246." Id. at 5; see also id. at 15, 40, 43 n.23. This assertion is false, as appellees must know. Appellees' lead counsel signed a complaint in the state court action

as attorney for intervening plaintiffs alleging that "[t]he new state legislative districts created by the 1991 legislature do not meet constitutional and other legal requirements." ABA-26. The original complaint in the state court action also raised issues regarding the "validity of any new legislative apportionment law." A-186 to A-188. The state court's plan addressed all alleged constitutional defects in Chapter 246, and no party has suggested that any such defects exist in the plan that the state court adopted.[6]

Second, appellees assert that no Voting Rights Act claims were raised in the state court action. It is undisputed that no party in either the state court action or the federal court action alleged that Chapter 246 violated the Voting Rights Act. Moreover, before adopting a legislative redistricting plan the state court was required to, and did, ensure that the plan complied with the Voting Rights Act.

Third, appellees contend that the federal court action, and not the state court action, involved claims that the 1982 legislative districts violated the Voting Rights Act. This contention is irrelevant, because once Chapter 246 was enacted, the 1982 legislative districts were no longer at issue. Furthermore, all parties throughout the pendency of both cases have agreed that the 1982 districts were unconstitutional because of gross population disparities. Thus, any claims that the 1982 districts violated the Voting Rights Act were really irrelevant even before Chapter 246 was enacted. Appellees' presumption that the 1982 districts were somehow reinstated for review of Voting Rights Act violations once it was determined that Chapter 246 contained technical defects is unsupported by any rule of law or precedent.

[6]Appellees also suggest, as the federal court did, that the state court's legislative redistricting plan was not timely. They contend that, although the state court plan was adopted before the federal court's plan, there was not enough time for the appeal process to run its course. The obvious fallacy of this argument is that the federal court judgment likewise was subject to appeal.

II. THE STATE COURT'S JUDGMENT BARRED THE FEDERAL COURT FROM ADOPTING A LEGISLATIVE REDISTRICTING PLAN.

Strong policy reasons support Germano's requirement that federal courts defer to state court redistricting actions. Once a state court adopts a redistricting plan, additional sound legal doctrines bar federal courts from intruding on the state court's ruling. The Full Faith and Credit Act, 28 U.S.C. § 1738, and the doctrines of collateral estoppel and mootness are based on fundamental principles of comity, federalism, and judicial economy and are intended to prevent courts from issuing inconsistent and incompatible judgments. These doctrines should have prevented the federal court's wasteful interference with the state court's legislative redistricting plan.

Appellees contend that the Full Faith and Credit Act does not apply in this case because the federal court was not adequately notified of the state court's judgment. See Brief of Appellees at 38-40. The federal court was informed of the state court's order for judgment on several occasions and expressly took notice of the order. See Brief of Appellants at 22-23. No issue was raised as to the authenticity of that judgment in the federal court action by appellees or by the federal court. Appellees have therefore waived any objection they might have had as to the authenticity of the judgment. The federal court, having knowledge of the judgment, was required to respect the state court's judgment unless and until it was reversed. See Brief of Appellants at 24.[7]

[7]Appellees claim that the "last-in-time rule for conflicting judgments" prevents this Court from reviewing the federal court's decision to ignore the state court's judgment. Brief of Appellees at 39. As the authorities cited by appellees on this point indicate, this rule applies only in a third action, where two judgments in prior actions are in conflict. The rule does not apply to this situation where the judgment in the second action is on appeal.

Appellees also assert that the state court's judgment regarding legislative redistricting did not collaterally estop the parties in the federal action. See Brief of Appellees at 40-42. In a telling turn of position, however, Appellees have no difficulty recognizing the application of collateral estoppel to the state court action based on the federal court's judgment adopting a congressional redistricting plan. Id. at 46-48.[8] Likewise, although claiming that the state court plaintiffs' class did not represent the interests of all federal court plaintiffs, appellees readily assert that the federal court plaintiffs did represent the interests of the state court plaintiffs. They do so without noting that certain named plaintiffs, Walker, Miller, Sudor and Vangh, in the state action were not named in, and did not participate in, the federal action. Appellees presumably adopt appellants' contention that the plaintiff classes in both the federal and state actions adequately represented all Minnesota voters. Appellees' challenges to the identity of issues in the state and federal actions and to the sufficiency of the state court's proceedings are likewise untenable. See infra part I.C.; Brief of Appellants at 26-27.

Appellees argue that their claims in the federal case regarding legislative redistricting are not moot. See Brief of Appellees at 42-44. In a strained and confusing argument, Appellees claim that the Emison plaintiffs' claims regarding the 1982 legislative districts were not moot because the state court held Chapter 246 unconstitutional. In fact, the state court's order for judgment only held that a few isolated parts of Chapter 246 were unconstitutional and the state court adopted its own legislative redistricting plan to cure the defects. A-258 to A-259; A-261 to

[8]Appellants recognize that principles of collateral estoppel would apply to the federal court's judgment adopting a congressional redistricting plan if it is not reversed. Appellees also assert that appellants did not raise the mootness issue prior to this appeal. In fact, appellants raised the issue in oral argument at the last hearing held by the federal court, on December 4, 1991, and in various memoranda to the federal court in January 1992. E.g., R-114; R-122; R-126.

A-262. Once the state court judgment was entered, its plan, not Chapter 246 or the 1982 plan, was the only plan which could be used in Minnesota. The claims in the federal action that the constitutional or statutory rights of Minnesota voters would be violated if elections were conducted under Chapter 246 or the 1982 plan were then moot since the state court judgment prohibited any such elections.[9]

The federal court's adoption of a legislative redistricting plan after the state court judgment was entered created an unworkable, disruptive, and wasteful situation. Until this Court stayed the federal court judgment, Minnesota's election officials were confronted with orders requiring legislative elections to be run under two incompatible plans. Appellees appear oblivious to this situation. Adrift from any mooring in principle, appellees' arguments would have this Court affirm the federal court's ruling and thereby restore Minnesota to the state of chaos which the federal court created for Minnesota's legislative elections.

III. THE FEDERAL COURT'S LEGISLATIVE REDISTRICTING PLAN WAS REQUIRED TO ADHERE TO CHAPTER 246 OR TO THE STATE COURT'S PLAN.

The federal court was required to defer to the parallel state court redistricting action and it was required to respect the state court's judgment adopting a legislative redistricting plan. Even if the federal court were free to adopt a legislative redistricting plan, however, the court was required to base its plan on Chapter 246.

[9]Appellees repeatedly assert that an adjudication of the Voting Rights Act claims relating to the 1982 plan was necessary. This argument is bewildering, since no party ever claimed that the 1982 districts could be used after the 1990 census revealed dramatic population disparities in the districts.

A. Chapter 246 and the State Court's Plan Reflected Discernible State Redistricting Policy.

Appellees recognize that, under the doctrine expressed in White v. Weiser, 412 U.S. 783 (1973), court-adopted redistricting plans must adhere as fully as possible to discernible state policy. Brief of Appellees at 28-29. Appellees also recognize that a court-adopted plan in Minnesota was required to be based on Chapter 246 if possible. Id. at 32-35. They argue, however, that it was not possible to base a plan on Chapter 246 because "Chapter 246 required extensive redrafting, not just technical corrections, before an election could possibly be conducted under it." Id. at 35.

Appellants have previously noted that the defects in Chapter 246 could be, and were, remedied with minor technical corrections. Brief of Appellants at 5-6. A brief review of the state court's plan or of Senate File 1596, each of which highlights the types of changes needed to correct the defects in Chapter 246, readily reveals the extremely technical and minimal nature of the changes. See A-265 to A-354; SA-120 to SA-183. Similarly, comparison of the maps from which Chapter 246 was written with the maps of Senate File 1596 illustrates that the changes are technical rather than substantive. See R-44 to R-47; R-110 to R-117. Although emphatically denying that any state policy can be gleaned from Chapter 246, appellees do not deny that the state court's plan and Senate File 1596 closely follow Chapter 246. Nor could they, as most of the districts created by Chapter 246 required no change at all, and most of the boundary lines in the remaining districts remained unchanged.[10]

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[10] As a fallback argument, appellees suggest that, even if state policy could be discerned from Chapter 246, Weiser did not require that Chapter 246 be followed because the law contained constitutional defects. Brief of Appellees at 34. This construction of the doctrine set forth in Weiser would render it meaningless, because the doctrine is not even applicable unless the state's redistricting law is found to have some constitutional or statutory defects.

Appellees' reasoning fails for yet another reason. The defects in Chapter 246 largely consisted of ambiguities which could be corrected by resort to principles of statutory construction. The state court properly interpreted the statute before making its own corrections to the few remaining defects in the law. A-258 to A-259; A-261 to A-262. Even if the federal court were not bound by the state court's judgment under Germano and rules of issue preclusion, it was bound to follow the state court's interpretation of the ambiguous portions of the law. This is true either under the doctrine set forth in Weiser[11] or under rules of statutory construction, see, e.g., McSherry v. Block, 880 F.2d 1049, 1052 n.2 (9th Cir. 1989), cert. denied, 111 S. Ct. 1404 (1991); United States v. Spadaccino, 800 F.2d 292, 296 (2d Cir. 1986). At a minimum, the federal court was required to do as the state court did and attempt to construe Chapter 246 in a way that preserved as much of the law as possible. See Minn. Stat. §§ 645.16-.43 (1990); R-114 (Legislature's memorandum to federal court regarding statutory construction of Chapter 246 and urging deference to state court's judgment and interpretation). Instead, the federal court improperly adopted a legislative plan that is not based in any respect on Chapter 246 or on the state court's plan.

B. Chapter 246 and the State Court's Plan Do Not Violate the Voting Rights Act.

Appellees' arguments regarding legislative redistricting rely heavily on the purported need to resolve Voting Rights Act issues. If, as appellants have shown, the federal court's plan was required to follow Chapter 246 or the state court's plan to the extent

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[11] Appellees fail to make any meaningful argument why the state court's plan does not constitute discernible state policy for purposes of the doctrine set forth in Weiser.

possible, then the finding of a Voting Rights Act problem[12] in one senate district in Minneapolis would justify only those changes needed to cure the problem. See Upham v. Seamon, 456 U.S. 37 (1982) (per curiam). Creation of one minority-opportunity senate district in Minneapolis did not require changes to all districts in Minneapolis, much less throughout the entire state.

Chapter 246 and the state court's plan do not violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. There is no dispute that all three preconditions for proving a violation of Section 2, which were established in Thornburg v. Gingles, 478 U.S. 30, 48 (1986), are not met in this action. Appellees dispute only whether the Gingles preconditions need to be met at all.

Appellees claim that in Chisom v. Roemer, 111 S. Ct. 2354 (1991), this Court "rejected the use of judicially created limitations to restrict coverage under § 2." Brief of Appellees at 18-19. Appellees imply that, after Chisom, the Gingles preconditions should not be used in any Voting Rights Act case because they limit the coverage of Section 2. The Gingles preconditions, however, do not restrict the scope of Section 2 beyond the limits which Congress intended; they simply help identify unsustainable Voting Rights Act claims. Moreover, appellees read too much into the decision in Chisom. The Court in that case did not address the use of the Gingles preconditions and expressly stated that "the standard that should be applied in this litigation under § 2 is not at issue here." Chisom, 111 S. Ct. at 2368.

Appellees also argue that the reasons for applying the Gingles preconditions to multimember districts do not apply to

[12]The federal court did not find that Chapter 246 or the state court's plan violated the Voting Rights Act. Instead, it found a Voting Rights Act violation in an unidentified plan and held that Chapter 246 and the state court's plan did not sufficiently "remedy" the violation because they did not create a particular minority-opportunity senate district in Minneapolis.

single-member districts. This argument is insupportable and is fully addressed in the Brief of Appellants at pages 32 to 33 and in the Brief of the United States as Amicus Curiae Supporting Appellants at pages 9 to 16.

If the Voting Rights Act issue was relevant in the federal court action, then the parties should have had the opportunity to present evidence and arguments regarding it. There was no allegation in the case that Chapter 246 or the state court's plan violated the Voting Rights Act. The federal court nonetheless made its ruling without requesting submissions or holding a hearing on the issue. Appellees choose to ignore this due process concern and simply address the Voting Rights Act holding as if the record were complete.

The federal court's finding of a Voting Rights Act problem is clearly erroneous, even under a "totality of the circumstances" analysis and even on this partial record. One of the appellees' two primary arguments on this issue is that the minority-opportunity districts created in Chapter 246 were designed to protect incumbents rather than to enhance the power of minority voters. Brief of Appellees at 27-28. Appellees do not cite any evidence that the two minority-opportunity senate districts and three minority-opportunity House districts created by Chapter 246 in Minneapolis were so designed. At the same time, appellees ignore the undisputed evidence that the Legislature made extensive efforts to obtain the advice of minority group leaders on how to draw the best minority-opportunity districts in Minneapolis, that Chapter 246 was founded upon the "footprints" which were created from the recommendations of various minority group leaders, and that these districts were unanimously endorsed by the National Association for the Advancement of Colored People over a competing plan which contained a senate district that was very similar to the minority-opportunity senate district later included in the federal court's plan. See Brief of Appellants at 4-5, 40-41. Appellees likewise ignore the evidence that the minority-opportunity districts

created in Minneapolis by Chapter 246 did pair incumbents. See id. at 40.

The appellees' second primary argument under the "totality of the circumstances" analysis is that the under-representation of minority group members from Minneapolis in the Legislature demonstrates that Chapter 246 and the state court's plan violate the Voting Rights Act. This argument assumes that minority group members always prefer minority group members as their representatives, and it assumes that the Voting Rights Act mandates proportional representation. These assumptions are simply wrong. See id. at 30-31, 36-42. Moreover, appellees' argument overlooks the significant fact that no elections have yet been held under Chapter 246 or the state court's plan.

The federal court found under the "totality of the circumstances" analysis that the Voting Rights Act mandated the creation of a senate district of a particular shape in Minneapolis. This hour-glass shaped senate district stretches from south Minneapolis around the downtown area and into north Minneapolis, and it makes the creation of a second minority-opportunity senate district in Minneapolis impossible. See A-1 to A-2 (maps of minority-opportunity districts). The Legislature, after extensive investigation and consideration, elected not to draw the hour-glass shaped senate district which would combine the socially, economically, and politically distinct neighborhoods of north and south Minneapolis. The Legislature chose instead to create two effective minority-opportunity senate districts, one in north Minneapolis and one in south Minneapolis. Its decision was a quintessentially political decision. The federal court's conclusion that the Legislature's plan runs afoul of the Voting Rights Act is simply an effort to substitute its judgment for that of the Legislature and is clearly erroneous even on the incomplete record in this action.

The districts created in Chapter 246 and adopted in the state court's plan do not violate the Voting Rights Act. The

federal court was therefore required to defer to these plans in the City of Minneapolis as well as the rest of the state, and its judgment adopting a legislative redistricting plan should be vacated.

IV. THE FEDERAL COURT'S CONGRESSIONAL REDISTRICTING PLAN SHOULD HAVE BEEN BASED ON SENATE FILE 1597.

The federal court erred in adopting a congressional redistricting plan rather than deferring to the pending and active state court action. Even if the federal court acted properly, its judgment adopting a congressional plan should be vacated because it was not based on Senate File 1597.

Appellees agree that a court-adopted redistricting plan must be based on state policy to the extent possible and that an act of the Legislature, without the Governor's concurrence, constitutes state policy. See Brief of Appellees at 29-30 (recognizing that joint legislative resolution constitutes state policy). Appellees nonetheless argue that, although Senate File 1597 was adopted by the Legislature, it was not state policy because the Governor vetoed it.

The doctrine established in White v. Weiser, 412 U.S. 783 (1973), prevents courts from engaging unnecessarily in the inherently political process of redistricting. It is based on the sound understanding that political bodies, such as legislatures, are better equipped to address the competing political concerns which inevitably enter into redistricting decisions. See Upham v.Seamon, 456 U.S. 37, 41-42 (1982). These policy concerns require courts to defer to a redistricting plan which is adopted by a state's legislative branch, the branch which is charged with drafting redistricting plans, even if the executive branch is not in agreement with all provisions of the plan. Without this requirement, a court would be in the position of rejecting the legislature's decision and

creating a plan which the legislature could have adopted but chose not to. The decisions of this Court, and of other courts support appellants' position. See Brief of Appellants at 47-48.

Because the federal court wholly ignored Senate File 1597 in the plan it adopted, its judgment adopting a congressional redistricting plan should be vacated.

CONCLUSION

The doctrines expressed in Germano, Gingles, and Weiser and the issue preclusion doctrines of the Full Faith and Credit Act, collateral estoppel, and mootness provide sound and effective guidelines to federal courts. These rules permit federal courts to address redistricting claims effectively but prevent federal courts from interfering unnecessarily with this intensely political state responsibility. Germano bars federal courts from assuming a role in redistricting so long as state institutions are taking appropriate actions; the Full Faith and Credit Act and the doctrines of collateral estoppel and mootness prevent courts from relitigating redistricting issues which have already been addressed; the Gingles preconditions require meaningful proof of violations of Section 2 of the Voting Rights Act; and the doctrine established in Weiser requires courts to limit the remedies they adopt to correcting the defects they find. These rules are clearly stated, easily applied, and supported by sound policy rationale. The federal court's judgment

adopted legislative and congressional redistricting plans in derogation of each of these principles and should be vacated.

DATED: July 30, 1992

Respectfully submitted,

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